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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 WILLIAM ROPER,

10 Petitioner,

11 vs.

12 CRAIG FARWELL, *et al.*,

13 Respondents.
14 _____

3:03-cv-0512-LRH-VPC

ORDER

15 On September 26, 2005, the court entered an Order dismissing the habeas corpus petition in
16 this case (docket #31). Judgment was entered on the same day (docket #32).

17 On October 26, 2005, petitioner filed a Notice of Appeal (docket #33) and an Application for
18 Certificate of Appealability (docket #34). Respondents have filed an opposition to the application
19 for a certificate of appealability (docket #35).

20 Petitioner was permitted leave to proceed *in forma pauperis* in pursuit of this petition and,
21 thus, shall be permitted to pursue his appeal without paying the filing fee.

22 The court will deny petitioner's application for a certificate of appealability. The standard for
23 the issuance of a certificate of appealability calls for a "substantial showing of the denial of a
24 constitutional right." 28 U.S.C. §2253(c). The Supreme Court has interpreted 28 U.S.C. §2253(c)
25 as follows:

26 Where a district court has rejected the constitutional claims on the merits, the

1 showing required to satisfy §2253(c) is straightforward: The petitioner must
2 demonstrate that reasonable jurists would find the district court's assessment of the
3 constitutional claims debatable or wrong. The issue becomes somewhat more
4 complicated where, as here, the district court dismisses the petition based on
5 procedural grounds. We hold as follows: When the district court denies a habeas
6 petition on procedural grounds without reaching the prisoner's underlying
constitutional claim, a COA should issue when the prisoner shows, at least, that
jurists of reason would find it debatable whether the petition states a valid claim of
the denial of a constitutional right and that jurists of reason would find it debatable
whether the district court was correct in its procedural ruling.

7 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also James v. Giles*, 221 F.3d 1074, 1077-79
8 (9th Cir. 2000). The court finds that petitioner has not met this standard.

9 The petitioner seeks a certificate of appealability on his claim related to the sufficiency of the
10 evidence, his claim that counsel was ineffective, and whether this court's decision to deny him an
11 evidentiary hearing was correct. The court finds that jurists of reason would not find this court's
12 decision on the merits of his claims debatable or even wrong. Petitioner has not demonstrated that
13 his claim of insufficient evidence was not rebutted by the record or that the Nevada Supreme Court's
14 decision on the claim was the result of an incorrect or objectively unreasonable application of clearly
15 established federal law. The record contains evidence which supports all elements of the crimes for
16 which petitioner was convicted. Neither has petitioner met the requisite standard in relation to his
17 claims of ineffective assistance of counsel.

18 Finally, the denial of an evidentiary hearing in this matter is well supported, both because the
19 request was not made with any degree of specificity and because petitioner has not met the
20 requirements for obtaining such a hearing, as set forth in 28 U.S.C. 2254(e)(2).

21 **IT IS THEREFORE ORDERED** that petitioner's application for issuance of a certificate of
22 appealability (docket #34) is **DENIED**.

23 Dated this 13th day of February, 2006.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE